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In the Supreme Court of the United States

OCTOBER TERM, 1965.

No. 339

ANTHONY VERZI and JOHN VERZI,
Petitioners,

vs.

THE STATE OF OHIO,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of Ohio.

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OCTOBER TERM, 1965.

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ANTHONY VERZI and JOHN VERZI,

Petitioners,

vs.

THE STATE OF OHIO,

Respondent.

PETITION FOR A WRIT OF CERTIORARI To the Supreme Court of Ohio.

To the Supreme Court of the State of Ohio:

Petitioners pray that a Writ of Certiorari be issued to review the judgment of the Supreme Court of Ohio entered in this cause on the 14th day of April, 1965, dismissing the appeal of the Petitioners from a conviction under Ohio Revised Codes 4549.05 and 4549.06.

CITATIONS TO OPINIONS BELOW.

The Journal Entry of the Court of Common Pleas of Summit County appealing the judgment entered by the Municipal Court of Cuyahoga Falls, Ohio is unreported and it is printed in Appendix, *infra*, page 16.

The Journal Entry of the Court of Appeals of the Ninth Appellate Judicial District of Ohio, Summit County, affirming the conviction is unreported and is printed in Appendix, *infra*, page 16.

The order of the Supreme Court of the State of Ohio dismissing the appeal April 14, 1965 is unreported and is printed in Appendix, *infra*, page 17.

JURISDICTION.

The jurisdiction of this Court is invoked under Title 28 U. S. C. A. 1257 (3) which section pertinently provides:

> "Final judgments or decrees rendered by the highest Court of a State in which a decision could be had may be reviewed by the Supreme Court as follows: * * * (3) By writ of certiorari * * * for any title, right, privilege or immunity especially set up or claimed under the Constitution."

This cause involves a violation of the Fifth, Sixth and Fourteenth Amendments of the United States Constitution.

QUESTIONS PRESENTED.

1. Whether the fact that the Petitioners were denied the rights guaranteed by Section 10 of Article I of the Ohio Constitution and of the Fifth, Sixth, and Fourteenth Amendments of the Federal Constitution in that the trial court's denial of a request for a continuance by counsel who had been reengaged less than 24 hours before the matter was set for trial which in effect deprived the Petitioners of the right to counsel and due process of law.

2. Were the Petitioners denied a fair trial and due process by the admission and evidence by the trial judge of uncorroborated and unsubstantiated testimony by a police officer as to an incriminating conversation between the Petitioners which he reportedly overheard by means of a microphone device hidden in or about their jail cell.

CONSTITUTIONAL PROVISIONS WHICH THE CASE INVOLVES.

The pertinent portions of the provisions of the Constitution of the State of Ohio are set below "* * * in any trial and any court the party accused shall be allowed to appear and defend in person and with counsel." Ohio Constitution, Article I, Section 10.

The pertinent portions of the provisions of the United States Constitution herein involved are set below

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial * * * and to have the assistance of counsel for his defense." United States Constitution Amendment VI.

"* * * Nor shall any state deprive any person of life, liberty, or property without due process of law." Amendment 14, Section 1, Clause 2.

STATEMENT OF THE CASE.

On the 15th of April, 1961 the Petitioner, Anthony Verzi, was arrested in Cuyahoga Falls, Ohio and placed in custody in the Cuyahoga Falls jail at approximately 5 a. m. of said morning. Later that day, officers from Cuyahoga Falls arrested John Verzi, one of the Petitioners, and confined him to the Cuyahoga Falls jail at approximately 10:15 p. m. The Petitioners were subsequently charged with violation of R. C. 4549.05 and R. C. 4549.06, theft of automobile tires and the tampering of various automobile locks. Counsel, Marvin A. Koblentz, was originally retained by the Petitioners to represent them; subsequently thereto the Petitioners retained two other attorneys to represent them replacing the original counsel. On December 5, 1961, less than 24 hours before the commencement of the Petitioners' trial the trial court engaged in a pretrial conference with a Mr. Fanelley, a member of the